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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Policy Implications	)	MM Docket No. 91-221
of the Changing Video Marketplace	)	

COMMENTS OF THE OFFICE OF COMMUNICATION
OF THE
UNITED CHURCH OF CHRIST

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SUMMARY

The Commission should expand the scope of this proceeding to examine the effect of its deregulatory policies on news and public affair programming. By focusing only upon the financial issues affecting the video marketplace, the Commission is ignoring the failure of broadcasters to fulfill their public service obligation to provide "issue-responsive programming".

In the following Comments, OC/UCC provides evidence that broadcasters do not even know the purpose of their public service mission, much less take the public trustee obligation seriously. A study by the National Association of Broadcasters ("NAB") shows that fund raising drives constitute the most frequent response of television stations to issues of major public importance. According to NAB, such activities represent "broadcasters' public service involvement in specific major public issues of national concern." While public support activities are commendable, fund raising drives cannot be considered a fulfillment of the public trustee obligation to ascertain issues of critical importance facing the community and to present analysis from diverse and varying sources.

OC/UCC urges the Commission to use the opportunity of this Notice of Inquiry to clarify the public interest programming standard. Further, the Commission should require compliance with such standards as a prerequisite for cable TV "must carry" and/or "retransmission" protection. Only those stations that have demonstrably provided "issue-responsive programming" should be

entitled to such special government protection. OC/UCC maintains that the following standards advance the Commission's concern for ascertainment and an informed public opinion:

1) Minimal standards for locally produced non-entertainment programming. The standards should set forth both quantitative and qualitative requirements that licensees and citizens can easily interpret for the purpose of evaluating programming performance;

2) A standardized format for issues-programs lists;

3) A clear definition of the term "issue-responsive programming";

4) A requirement that stations provide a narrative statement on each issue selected to be addressed by means of "issue-responsive programming", as well as an explanation of the procedure used to identify issues of critical social importance facing the local community; and

5) a set of penalties ranging from financial forfeitures to license revocation for licensees that violate any of the standards listed above.

The Office of Plans and Policy ("OPP") has recommended that the Commission abolish its group ownership rule. The OPP paper, however, neglects to discuss the implications of the 1984 decision to repeal the 7-7-7 rule - a decision that was partly based on the premise that economies of scale could be achieved by increased group ownership. An examination of the financial data over the past decade shows that despite repeal of the 7-7-7 rule, rapidly increasing expenses have reduced television profits. Furthermore, pro-competitive policies favoring expanded station assignments have caused an increase in the demand for and the price of programming.

OPP disregards facts that show that rising expenses are primarily responsible for declining profits rather than loss of market share. Despite cable TV market penetration, each sector of the television industry experienced increased advertising revenues throughout the decade of the 1980s. The <u>increased revenues</u> received by the television industry year after year for the past 10 years is a testament to its ability to withstand marketplace competition.

Instead of focusing on market fragmentation, the Commission should examine cost trends that show that group ownership and associated economies of scale are insufficient to prevent television profits from declining. Inflation and the increased cost of syndicated programming will continue to cause expenses to escalate in the foreseeable future.

The Commission must also take into consideration the dangerous threat to a free society posed by increased concentration of the ownership. Although the number of media outlets has increased over the past decade, the fact remains that the number of <u>separately-owned</u> outlets has diminished. The purpose of the group ownership rule is to preserve diversity of viewpoint. Any policy proposal favoring the repeal of what may be considered the last vestige of structural regulation should be dismissed.

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COMMENTS OF THE OFFICE OF COMMUNICATION OF THE UNITED CHURCH OF CHRIST

I. INTRODUCTION.

The Office of Communication of the United Church of Christ ("OC/UCC") respectfully submits the following Comments in response to the Commission's Notice of Inquiry, FCC 91-215, released August 7, 1991 ("NOI").

OC/UCC is a telecommunications public interest advocate and has represented the views of the general public on numerous occasions before the Commission since 1956. The following Comments are intended to represent the views of OC/UCC and consumer interests.

II. THE COMMISSION'S 1984 DECISION TO RAISE THE GROUP OWNERSHIP CAP DID NOT PREVENT TELEVISION PROFITS FROM DECLINING. THE LESSONS OF THE PAST PROVE THAT FURTHER RELAXATION OF THE GROUP OWNERSHIP RULES WOULD NOT ADVANCE THE PUBLIC INTEREST.

The framework of the Commission's NOI is largely influenced by the working paper of the Office of Plans and Policy ("OPP paper").[1] The paper concluded that marketplace competition has caused television profits to decline[2] and that broadcasters could operate more economically if all restrictions on group ownership were removed.[3]

In its haste to promote deregulation, the Office of Plans and Policy neglected to examine the effects of the Commission's 1984 decision to repeal the 7-7-7 rule - a decision that was partly influenced by the belief that economies of scale could be achieved by increased group ownership.[4]

In fact, television expenses increased more rapidly after 1984 than they did during the five years preceding repeal of the 7-7-7 rule. Secondly, excessive expenses are the primary cause of declining profits rather than decreased advertising revenues as OPP maintains.

The reality of the Commission's past experience with group

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1. Office of Plans and Policy Working Paper # 26, Broadcast Television in a Multichannel Marketplace, DC 91-817, 6 FCC Rcd 3993 (1991).

2. OPP paper at viii, and page 38.

3. id. at 170.

4. [G]roup owners may have cost advantages derived from economies of scale. These economies may mean that the cost of operating an additional station is less for a group owner than would be the cost of running a single station for a new owner. These economies of scale may stem from the ability to spread the services of management, bookkeeping, secretarial sales, and programming personnel over a number of stations, and the potential for group advertising sales a program purchases.

In the Matter of Amendment of Section 73.3555, 100 FCC 2d. 17 ("1984 Group Ownership Amendment") para 82.

ownership rules shows that such regulations cannot stem rising costs fed by inflation and other marketplace pressures. The Commission should not risk the public's interest in localism and diversity of viewpoint by experimenting with the group ownership rules to achieve, at best, speculative economic benefits for the industry.

A. DECLINING PROFITS ARE ATTRIBUTABLE TO EXCESSIVE EXPENSES THAT HAVE OUT-PACED REVENUES.

Marketplace competition is not the primary cause of declining profits. TV advertising revenues have increased each year for the past 10 years despite loss of market share. Historical data provided below show that rapidly increasing expenses, such as syndicated programming costs, have out-paced advertising revenues.

1. REVENUES HAVE INCREASED FOR EACH SEGMENT OF THE INDUSTRY DESPITE LOSS OF MARKET SHARE.

The Office of Plans and Policy goes to great lengths to overstate the case that market share penetration by competing media (eg. CATV) is responsible for television's declining profits.

> Cable viewing appears to have displaced viewing of over-the-air signals to a considerable extent in recent years.

OPP paper at 20.[5]

> Broadcasters' revenues fell over much of the late 1980's [as a direct result of CATV competition]....

id. at 46

However, information found elsewhere in the OPP paper shows

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5. "Competition has reduced television station profits...". OPP at viii.

that revenues, adjusted for inflation, <u>increased</u> from 1975 to 1989 for both affiliate and independent stations (see OPP paper at 41, Table 12).[6] Research by the National Association of Broadcasters ("NAB") also confirms that inflation adjusted advertising revenues were higher during the second half of the 80's decade.

> In the late 70's and early 80's ... revenue growth was substantial and higher than in recent year[s]....
>
> The story does not end here, however. Due to the inflationary environment of the late 70's and early 80's and the elimination of those pressures in the most recent years, the comparison of those years is reversed. <u>The real rates of increase have been greater in the last six years when compared to the previous six</u>.
>
> <u>This recent strong growth suggests a promising outlook for future growth</u>.

<u>The Myth of the Roaring 70's and the Quiet 80's</u>, Info-Pak, October/November 1988, NAB, at 3, (emphasis provided).

Exhibit I of this Comment compares the growth of advertising revenues of the television industry with the media industry as a whole. In 1986 and 1990, advertising revenues for the television industry actually exceeded other media in rate of growth.

Advertising revenues have increased for <u>each</u> sector of the television industry <u>despite marketplace competition</u>. Figures compiled by NAB show that revenues for the average network affiliate increased 147 percent between 1984 and '89. For the same time period, revenues increased 119 percent for independent stations, 125 percent for UHF independents, 162 percent for VHF independents, 132 percent for all UHF stations, and 124 percent

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6. The growth in revenues for independents from $10.9 million in 1986 to $12 million in 1989 should be interpreted as four years of steady growth and not a "slight decline" as OPP states. OPP at 40.

for all UHF affiliates (see Graph A, Exhibits II - VII).[7]

Advertising revenues continued to increase during the late 1980s despite some loss of viewing shares by the television industry. Exhibit VIII shows a general decline in viewing shares for over-the-air broadcasters.[8] Network affiliated stations, nonetheless, continue to dominate the marketplace. In 1990, the television household viewing shares for network affiliates were twice the amount of viewing shares for basic and pay cable services combined (ie. 55 percent compared to 27 percent). In non-cable households (40 percent of all television households), affiliate stations accounted for 70 percent of the market - the remaining market share belonging to independent stations and educational broadcasters.

Even in cable households where basic and pay cable services tend to dominate the market, broadcasters - particularly independents - benefit from cable carriage of their TV signal.

> Cable carriage of over-the-air signals reduces the disadvantage of UHF relative to VHF stations by increasing UHF stations' geographic reach and improving their reception quality.

OPP paper at 17 (emphasis provided).

Instead of fragmenting the broadcast market, cable in many

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7. Data for Graph A of Exhibits II - VII was compiled from the NAB Television Financial Reports, 1980, 1985, and 1990. All figures are industry averages and not cumulative totals. 1979 revenues were not published for VHF independents and UHF affiliates.

8. OC/UCC found thirty errors in Table 6 of the OPP paper at 23. Exhibit VIII is based upon the 1991 and 1986 editions of Cable TV Facts published by the Cabletelevision Advertising Bureau, the same source cited by the Office of Plans and Policy.

instances has contributed to the economic survival of broadcasters in both small and large markets (see Section V B, infra, for further discussion).

Contrary to OPP's conclusion, competition from cable TV has not been the primary cause of lower profits. The television industry's ability to achieve revenue growth year after year for the past 10 years has been impervious to increased competition.

2. SINCE THE 1984 REPEAL OF THE 7-7-7 RULE, EXPENSES IN EACH SECTOR OF THE BROADCAST INDUSTRY HAVE ESCALATED TO RECORD HEIGHTS.

Although the purpose of repeal of the 7-7-7 rule was, at least in part, to allow for the exploitation of economic efficiencies, costs spiraled to record heights after 1984.

Exhibit IX compares the growth of group ownership with average industry expenses and profits from 1979 to 1989.[9] The graph indicates an 11 percent increase in the number of group owned stations after the cap was changed to 12-12-12 in 1984. Expenses increased 56 percent during the same period. Prior to 1984, profits rose 79 percent and declined 40 percent after the 12-12-12 rule was adopted.

Historical facts simply provide no basis for the claim that increased group ownership can significantly improve the economic vitality of broadcasters. In fact, an analysis of historic data proves just the opposite - expenses increased at a greater rate

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9. Data for Exhibit IX is based upon financial figures obtained from the NAB Financial Reports for 1980, 1985, and 1990. The number of group owners for the years surveyed was obtained from the group broadcaster listings of the 1980, 1985, 1990 editions of the Broadcast Yearbook.

after the group ownership caps were raised.

Graph A of Exhibits II - VII compares the expenses of each industry sector in five year segments beginning with 1979. Since the adoption of the 12-12-12 rule expenses have increased to unprecedented heights. In 1989, expenses actually exceeded revenues for UHF Independents, all UHF stations, and all UHF affiliates (Graph A, Exhibits IV, VI, and VII respectively; the line graph denotes a loss for these industry sectors). The average independent station experienced marginal profits of 221,000 dollars in 1989 (Graph A, Exhibit III).

Expenses for network affiliates and VHF independents also increased at a fast rate between 1984 and 1989. However, the advertising revenues for these stations increased at a sufficient pace to keep their 1989 earnings level with 1984 earnings (Graph A, Exhibits II and V).

In summary, three out of six sectors of the industry declined economically after deregulation in 1984; a fourth sector - independent stations - barely broke even.

A second graph, denoted B, compares the profit margins of the nation's 500 largest corporations with the profit margins of the television industry. The fortune 500 companies experienced no change in average profit margin - approximately 5 percent - for the years 1979, 1984, and 1989.

The profit margins of most of the television industry sectors greatly exceeded that of the fortune 500 companies in 1979 and 1984. For example, the average profit margin of network affiliated stations was 26 percent in 1979 and 33 percent in 1984 (Graph B, Exhibit II).

Figures for 1989 show that television profit margins declined to levels equal to or <u>below</u> the fortune 500 companies in four out of six industry sectors (see Graph B, Exhibits III, IV, VI, and VII). Independent station profit margins in 1989 were 1 percent. UHF independents margins declined to negative 41 percent.

Graph C of Exhibits II-VII compares the percentage change of selected expenses for the periods 1979 to 1984 and from 1984 to 1989. For the purpose of these graphs broadcast rights is a subclassification of program and production expenses. It is primarily comprised of syndicated programming costs, as well as features, specials, sports events and barter programming costs.

An examination of selected expenses shows that the cost of syndicated programming contributed to declining profits more than any other expense category. (Graph C, Exhibits II, III, V, and VI). Between 1984 and 1989, <u>broadcast rights</u> increased 147 percent for the average network affiliated station. For UHF network affiliates <u>broadcast rights</u> increased 87 percent.

Independent stations experienced an 87 percent increase in <u>broadcast rights</u>, a 59 percent increase in programming, and a 58 percent increase in general administration. VHF independents maintained a 17 percent profit margin despite a 182 percent increase in <u>broadcast rights</u> and a 122 percent increase in programming.

UHF independents had 41 percent in negative earnings. Their greatest expense increase was in news (101 percent); broadcast rights increased 82 percent while general administration and programming increased 69 percent and 66 percent respectively. For the average UHF station, broadcast rights, programming, and general administration expenses all increased at a fast pace - 114 percent, 88 percent and 87 percent respectively. UHF stations had 10 percent negative earnings.

In four out of six industry sectors, the costs of broadcast rights grew at a rate faster than any other expense category. In the remaining two sectors, broadcast rights accounted for the second greatest increase in expenses.

The rise in the cost of syndicated programming is primarily attributable to the expansion in the number of independent stations during the past decade. As long as vast numbers of independent stations rely upon satellite supplied sources of programming the demand for syndicated programming will remain the same.

Secondly, by raising the group ownership caps in 1984 the Commission only created more demand for nationally syndicated programming. As demonstrated in Section III, _infra_, group owners rely more on satellite supplied sources of programming than individually owned stations.

Another important factor identified by other researchers is the repeal of the anti-trafficking rule which set off a station buying binge throughout the 1980s.[10] Interest payments have escalated in order to service the highly leveraged debt used to finance the new rash of station acquisitions.[11]

The repeal of the anti-trafficking rule in combination with the adoption of a 12-12-12 ownership cap and expanded station assignments have had a synergistic affect upon the marketplace resulting in increased interest payments. To eliminate or to relax the group ownership restrictions would cause interest payments to further escalate - effectively negating any economic efficiencies that might be associated with group ownership.

B. ECONOMIES OF SCALE ASSOCIATED WITH GROUP OWNERSHIP HAVE PROVEN TO BE AN INEFFECTIVE MEANS FOR ARRESTING FAST GROWING EXPENSES.

In response to the NOI question,

> Do our ownership rules, for example, prevent realization of economies of scale and limit program investment which might otherwise promote the vitality of local stations?

NOI at 3.

OC/UCC concludes from the above data that enforcement of the present ownership rules is not the problem. In fact, further relaxation of the rules will exacerbate rather than alleviate the financial decline of broadcasters.

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10. Elimination of the rule has opened the broadcast station market to station traders, individuals and groups with no continuing interest in operating the stations they purchase. This, in turn has led to a net rise is station demand, increasing, rather than decreasing station prices.

Ferrall, Victor E., "The Impact of Television Deregulation on Private and Public Interests," Journal of Communications, Winter 1989 p. 17.

11. id. at 19.

In view of past developments the Commission cannot rationalize that further group ownership relaxation will benefit the public interest. First, the true cause of the television industry's profit losses - rising programming costs and inflation - are caused by marketplace pressures and the general state of the economy. Clearly, such complex and difficult to manage economic forces cannot be remedied by modifications to the group ownership rule. As stated by Commissioner Duggan,

> I do not believe that the entire fate of free over-the-air broadcasting is a matter of legislation and regulation. I believe that the fate of broadcasters is much more in the hands of broadcasters themselves; it hangs more on their business decisions, their creativity, their agility, their response to marketplace realities.

Dare We Be Optimistic?, Remarks of Commissioner Ervin S. Duggan before the NAB Hundred Plus Exchange, October 7, 1991, at 5.

Secondly, group ownership rules are intricately linked to the regulatory scheme as a whole. The Commission's abandonment of anti-trafficking safeguards offers no protection from market trading practices which will result in even higher debt loads and interest payments. Furthermore, stations will continue to rely upon nationally syndicated programming in the absence of local non-entertainment programming guidelines, thus driving up the cost of syndicated programming and at the same time diluting the public's interest in diversity and localism.

The recommendations proposed by OPP to correct the financial problems of the marketplace are misguided. Commission policy can best be directed towards examining the effects of the its past deregulatory policies that along with the general state of the economy have contributed to the present marketplace circumstances. By focusing only upon group ownership restrictions and not the total marketplace effects of television deregulation, the Commission will be unable to fulfill its mandate to ensure the best practical service to the general public.

III. GROUP OWNED STATIONS RELY MORE ON NATIONALLY SYNDICATED PROGRAMMING AND PRODUCE LESS LOCAL PUBLIC AFFAIRS.

As part of a more extensive survey of public interest programming, OC/UCC compiled a database on the amount of informational programming aired in 82 ADI markets in 1974, '79, 84 and '89.[12] Five markets in that survey were randomly selected in both 1984 and 1989.[13] For the purpose of this NOI, OC/UCC determined the amount of news and public affairs aired in these markets and analyzed the data based upon the ownership characteristics of the stations.[14]

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12. "The Public Cost of TV Deregulation: A Study of the Decline of Informational Programming on Commercial TV" prepared by OC/UCC in support of testimony for the Oversight Hearing on the Public Interest Standard of the 1934 Communications Act, House Telecommunications and Finance Subcommittee, May 15, 1991. ("OC/UCC Informational Programming Study") A copy of the study is appended to these Comments.

13. ADI markets randomly selected in 1984 and 1989 were Portland, Ore., Memphis, Tenn., Corpus Chisti, Tex., Sioux City, Io., and Peoria, Ill.

14. OC/UCC relied upon the group ownership listings provided in the Broadcast Yearbook to determine which stations were group owned in 1984 and 1989. Stations that satisfied either of the following characteristics were denoted Class C stations: a) individually owned in 1984 and group owned in 1989, b) group owned in both years and the group owner held the same number of properties in 1984 and 1989, c) group owned in both years and the group owner acquired additional properties after 1984.

Other stations were placed in two control groups. Class A stations were individually owned in both 1984 and 1989. Class B

Based upon the results of the analysis, OC/UCC concluded that group owned stations air mostly nationally syndicated news and public affairs and provide less locally produced public affairs programming. Individually owned stations, on the other hand, produce more local public affairs and significantly less nationally syndicated news. The amount of local news aired provided by group and individually owned stations was about the same.

These findings, summarized in Exhibits X and XI,[15] contradict the unfounded proposition that savings from the economic efficiencies of group ownership are invested in additional local programming. From 1984 to 1989, increased economies of scale were theoretically made available to the Class C surveyed stations (see class definitions in note 14). Over the five year period, 29 additional television stations as well as 1 FM and 1 AM station became associated with the Class C stations.[16] The

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stations were either group owned in '84 and individually owned in '89 or were group owned in '84 but the group owner had fewer properties in 1989.

15. Figures in Exhibits X and XI represent the amount of air time for public interest programming in terms of percentage of the total amount of air time during the 6am to midnight day part. See page 11 of the OC/UCC Informational Programming Study in the appendix for further details on methodology.

16. In order to understand the extent to which economies of scale were available in 1984 compared to 1989, the group owners of the Class C stations were analyzed in terms of their total national holdings. In 1984, the national holdings were 32 television stations, 13 FM stations, and 10 AM stations. Four of the stations also had the advantage of cross-ownership with an AM and an FM station in the same market. Three of the group owners had interests in daily newspapers and one group owner had interests in cable TV.

data suggest that group owners use common ownership to their advantage by distributing the same programming - programming that has a national focus - to all of its media outlets (see Graph B, Exhibits X and XI).

Local public affairs programming in the surveyed markets was primarily aired by individually owned stations (Class A Stations; see Graph A, Exhibit X). After 1984, individually owned stations also significantly increased the amount of their locally produced news and public affairs (Graph A, Exhibits X and XI).

Stations that were associated with smaller groups or that were sold to individual owners after 1984 (Class B stations) provided more local public affairs in 1989 (Graph A, Exhibit X). It also appears that Class B stations shifted resources from national to local news programming after 1984.

This analysis of programming trends in five markets clearly suggests that a further relaxation of the group ownership rules would have a detrimental affect upon programming addressing local issues and viewpoints. Instead of fostering localism, group ownership encourages the proliferation of syndicated programming.

IV. RELAXATION OF THE GROUP OWNERSHIP RULES WILL ONLY CONTRIBUTE TO THE GROWING TREND TOWARDS CONCENTRATION OF CONTROL AND DIMINISHED DIVERSITY OF VIEWPOINT.

In the chapter entitled, "The Market for Video Media", the OPP paper discusses the availability of "alternate sources of

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In 1989, the national holding had increased to 61 television stations, 14 FM stations, and 11 AM stations. The cross-ownership interests remained the same, except that the interest in cable TV had been divested.

video programming". Nowhere within its 180 pages, however, does the paper examine diversity of viewpoint concerns and the need for independently owned media outlets. For example, page 11 of the paper says,

> The past fifteen years have seen the advent of alternative sources of video programming through the increasing penetration of cable television and the introduction and diffusion of the home videocassette recorder.

The past decade has also witnessed an increasing trend towards concentration of media ownership in the hands of a few. The availability of more media outlets is irrelevant, if large numbers of electronic and print media are under common ownership.

In The Media Monopoly, Dr. Ben H. Badikan states that in 1981, forty-six companies owned most of the media. However,

> [t]oday, despite more than 25,000 outlets in the United States, twenty-three corporations control most of the business in daily newspapers, magazines, television, books, and motion pictures.

The Media Monopoly, Dr. Ben H. Badikan, Beacon Press, Boston, 3rd edition at 4.

A recent survey of group owners undertaken by OC/UCC found that twenty group owners control 46 AM stations, 48 FM stations, 96 television stations, over 1000 daily newspapers and magazines as well as interests in 4 cable TV companies and 2 national syndication companies (see Exhibit XII).[17] Group owners, such as Capital Cities/ ABC, Donrey Media Group, and Park Communications own over 100 daily newspapers each.

In considering whether to relax the group ownership rule,

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[17]. Survey was based upon the listing of broadcast group owners with cross-interests in newspapers published in the 1990 edition of the Broadcast Yearbook.

the Commission must not limit its analysis to the number of media outlets. What is important is the number of separately-owned media.

Diversity of viewpoint is a primary goal of the group ownership rule.[18] Any proposal that would interfere with the Commission ability to attain that goal (ie. OPP's proposal to eliminate the ownership rule) must be abandoned. A relaxation of the group ownership restrictions would not only contribute to the trend towards concentration of control, but also pose a threat to the democratic process and the ability of the public to have free access to diverse points of view.

V. THE COMMISSION MUST ADOPT A CLEARLY DEFINED SET OF PUBLIC INTEREST STANDARDS. ONLY THOSE LICENSEES WHO ARE DEMONSTRABLY RESPONSIVE TO LOCAL NEEDS AND PROBLEMS SHOULD BE ENTITLED TO GOVERNMENT PROTECTION (ie. "must carry" or "retransmission").

Prior to deregulation, all broadcasters received streamlined processing of their license renewal applications in return for providing minimal amounts of news and public affairs programming.[19] The non-entertainment guidelines along with the requirement to perform community ascertainment and to maintain programming logs were repealed in 1981 for radio and 1984 for television.[20] According to the Commission, "program content

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18. 1984 Group Ownership Amendment para. 24. The Commission's commitment to diversity is also reflected in the NOI at para. 2.

19. Amendment of Section 0.281 of the Commission's Rules, 59 FCC 2d. 491, 493 (1976).

20. Deregulation of Radio, 84 FCC 2d. 968 (1981); Commercial TV Stations, 98 FCC 2d. 1076 (1984) ("Commercial TV Stations").

rules" were inconsistent with its theory on marketplace regulation and its plan to make structural regulation the hub of its regulatory policies.[21]

In the years since deregulation and the abolishment of the Fairness Doctrine, the Commission has signaled its unwillingness to enforce the public interest goals of localism and diversity of viewpoint. Beginning with the repeal of the anti-trafficking rules in 1982, the Commission has either eliminated or gradually reduced the effectiveness of its structural regulation policies. In 1984, the Commission eliminated its regional multiple ownership rules.[22] In the same year, the Commission justified increasing the national group ownership cap to 12-12-12 by maintaining that it would continue to rely upon duopoly rules to protect localism.[23]

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21. The radio deregulation that we are proposing today is part of an overall scheme that has as its hub a shift in our regulatory approach based on structural means of achieving diversity....<u>[s]uch an approach would entail more effective use of multiple ownership regulation</u>.
<u>Notice of Inquiry, Deregulation of Radio</u>, 73 FCC 2d. 457, 539 (1979) (emphasis provided).

22. These rules were designed to promote media diversity at the regional level. <u>Regional Concentration of Control</u>, 101 FCC 2d. 402 (1984).

23. The Commission in 1938 adopted a strong presumption against granting licenses which would create such duopolies, based largely on the perceived virtues of "diversification of service." This presumption against duopoly ownership become an absolute prohibition when the Commission adopted rules governing commercial FM service in June 1940. <u>To reiterate, we do not propose to change this rule</u>."
<u>1984 Group Ownership Amendment</u> at 21 (notes omitted, emphasis provided).

The aim of the Commission's current "attic-to-basement" review - which envisions elimination of the duopoly rules[24] - could eliminate the last vestiges of structural policies originally intended to safeguard localism and diversity in the absence of "program content regulation".

Contributing to the precarious state of public interest regulation is the lack of a set of clearly defined and rigorously enforced standards for issue responsive programming. Research provided by industry and public interest advocates show that informational programming is on the decline. Furthermore, in the absence of clearly defined standards citizens are unable to exercise their statutory right to participate in the license renewal process.

A. IN THE ABSENCE OF CLEAR PUBLIC INTEREST STANDARDS BROADCASTERS ARE NOT LIVING UP TO THEIR PUBLIC TRUSTEE OBLIGATIONS.

Nowhere is the confusion about the public interest standard more apparent than in recent statements made by industry and FCC representatives in oversight hearings before the Senate Communications subcommittee.[25]

In response to a question concerning whether a station would be entitled to license renewal if it continued to replay the same public affairs programming and devoted the remainder of its airtime to program-length commercials, the Chairman of the Commis-

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24. OPP paper at 170.

25. Oversight Hearings on the Public Interest Standard Under the 1934 Communication Act, U.S. Senate Subcommittee on Communications, June 20, 1991.

sion stated, "I do not think they probably would meet the requirement which is that they keep a list of community issues and a list of illustrative programming responding thereto."[26] The response of the Chairman contradicts a license assignment case that was before the Commission three years earlier.[27] The case involved a home shopping station that replayed brief public affairs segments daily without change for a total of 15 minutes per day. The FCC approved the license assignment application.[28]

Chairman Sikes' reference to the issues-programs lists requirement as a standard for the public interest is also inconsistent with industry's interpretation of their public service mission. In testimony before the same Senate subcommittee, the President of the National Association of Broadcasters said that most television stations respond to "major public issues" by providing fund-raising activities.

> For television...74.9 percent did programs for local fund drives....
>
> In short, American broadcasters are responding to the issues which face our nation and are providing valuable service in providing information and discussion about those issues through public affairs programming.

Testimony of Mr. Edward O. Fritts, National Association of Broadcasters. Senate Communications Subcommittee on Broadcasters'

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26. id. Colloquy between Senator Breaux and Chairman Sikes.

27. Assignment and license renewal applications are subject to the same statutory public interest standards.

28. In re Application of Press Broadcasting Co. and Silver King Broadcasting, 3 FCC Rcd. 6640 (1988)

Public Interest Obligations, June 20, 1991 at 5.[29]

OC/UCC is dismayed by NAB's erroneous understanding of the public interest standard. Fund raising activities, while commendable, cannot be considered to be responsive to "major public issues". The public trustee obligation requires broad-

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[29]. NAB's testimony included a two part survey of on-air and off-air station activities that, according to NAB, was intended to "ascertain broadcasters' public service involvement in specific major public issues of national concern". In the Public Interest: A Survey of Broadcasters' Public Service Activities, published by NAB, May 1991, ("NAB Report") at 6

The survey did not indicate the length of the on-air programming, the frequency that the same program was repeated, or the day-part that the show was aired (ie. prime time or low viewership hours). The survey also did not indicate whether the stations had, in addition to responding to issues of national concern, had made any programming responses to issues determined to be critical to the needs and problems of their community of license.

> [A] commercial television broadcaster will remain subject to the obligation to provide programming that is responsive to the issues confronting its community.

Commercial TV Stations para. 32 (emphasis provided).
It is, therefore, impossible to assess the degree to which the industry has served the public interest based upon the information submitted.

Nonetheless, the survey indicated that only 3 percent or less of the television stations had responded to six of fourteen issues of social importance including such nebulous topics as "family" and "citizenship". Between 3 and 15 percent of the stations were reported to have aired programs in response to four of the issues. Another 6 to 23 percent of the stations aired programs for the remaining four issues. NAB Report at 10, Table 5.

The second part of the survey reported station activities in response to six selected "major public issues". Those issues included AIDS, Community oriented information/Fund Raising Drives, Drug Use/ Abuse, Drunk Driving/Alcohol Abuse, Hunger/Poverty/Homelessness, Medical Fund Raising.

The survey indicated that nearly 75 percent of the television stations provided programming in response to the issue "Community Oriented Information/Fundraising Drives". Forty-five percent of less of the stations provided programming in response to the remaining five issues - one of which included "Medical Fund Raising". NAB Report 8, Table 3.